

1 DAVID L. ANDERSON (CABN 149604)
United States Attorney

2 HALLIE HOFFMAN (CABN 210020)
3 Chief, Criminal Division

4 SAILAJA M. PAIDIPATY (NY5160007)
5 Assistant United States Attorney

6 450 Golden Gate Avenue, Box 36055
7 San Francisco, CA 94102-3495
Telephone: 415-436-7200
Fax: 415-436-7234
sailaja.paidipaty@usdoj.gov

8 Attorneys for United States of America

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12
13 UNITED STATES OF AMERICA,) CASE NO. 20-0480-2 WHA
14 Plaintiff,) 20-0480-3 WHA
15 v.) MEMORANDUM IN SUPPORT OF
16 LEYDIS YANETH CRUZ, and) GOVERNMENT'S MOTION TO DETAIN
17 PAMELA CARRERO) DEFENDANTS PENDING TRIAL
18 Defendant.) Hearing date: December 17, 2020, at 10:30 am

19
20 **I. INTRODUCTION**

21 Leydis Yaneth Cruz ran a drug trafficking organization that flooded the streets of this District
22 with significant quantities of fentanyl. As detailed in the criminal Complaint, along with her son (and
23 co-defendant), Emilson Cruz Mayorquin, and her daughter (and co-defendant), Pamela Carrero, Leydis¹
24 sold significant quantities of powder fentanyl and counterfeit pharmaceutical pills laced with fentanyl to
25 other drug re-sellers. On a near daily basis, Carrero, a leading foot soldier of the organization, sold that

26
27 ¹ Because numerous defendants in the case share the same last name, the government references
28 Defendant Leydis Yaneth Cruz by her first name throughout this memorandum.

1 fentanyl to users and drug dealers on the streets of the Tenderloin. Not only did Leydis and Carrero
2 expose the community to this dangerous drug, but they endangered their own young children by storing
3 fentanyl in the apartment that they shared. When agents executed a search warrant at the defendants'
4 apartment last Thursday, December 10, they found approximately 1.4 gross kilograms of suspected
5 fentanyl within the residence.² Some of the suspected fentanyl was hidden in the broiler of the family's
6 oven – easily within grabbing distance of Leydis's five year old daughter, and Carrero's two year old
7 son.

Both defendants have a long history of failing to abide by mandated conditions. In 2018, Carrero entered the United States illegally, was apprehended by U.S. Border Patrol and then released into Leydis's custody on the condition that she would appear for further immigration hearings. Carrero failed to appear as required and the following year an immigration judge ordered her removed in absentia. It was not the first time that Leydis had promised immigration officials that her children would appear for a hearing only to never be heard from again. In 2012 and again in 2014, Leydis took custody of Emilson after he was arrested by immigration officials. Each time, neither Leydis nor Emilson appeared for another hearing.

16 Carrero similarly has failed repeatedly to abide by court-ordered conditions. Following arrests
17 for drug dealing in the Tenderloin in August 2019 and March 2020, Carrero was ordered to stay away
18 from the area. But Carrero continued to sell drugs in the Tenderloin until the time of her arrest,
19 including to an undercover federal agent who bought fentanyl from Carrero in the Tenderloin this past
20 July.

Further, Leydis and Carrero have no misgivings about helping others evade authorities. In August 2020, the defendants discussed lying to a representative of a local sheriff's office with respect to the whereabouts of a family member who was subject to court supervision.

Finally, Leydis and Carerro have extensive ties to Honduras where their other family members reside. During one intercepted conversation with a family member in Honduras, Leydis lamented the

27 ² The drug weight reported reflects a gross weight calculation inclusive of packaging. The drugs
28 have been sent to the DEA Western Laboratory for further chemical analysis.

1 amount of money that Emilson was spending on a home being built there. The family member joked
 2 that with the amount of construction being done, the resulting residence would not be a “house,” but
 3 rather would be a “mansion.” Just this year, Leydis’s significant other represented to this Court that the
 4 family wanted to move back to Honduras. Leydis’s boyfriend, Jairo Rodriguez-Martinez, who pled
 5 guilty to drug trafficking charges before the Honorable Haywood S. Gilliam, Jr., indicated at sentencing
 6 that the couple and their young child intended to return to Honduras following completion of his
 7 sentence.

8 The law presumes that no condition or combination of conditions can reasonably assure Leydis
 9 or Carerro’s appearances as required or the safety of the community. Their conduct shows that the
 10 presumption is warranted. The government agrees with Pretrial Services that the Court should detain
 11 both defendants pending trial.

12 **II. LEGAL STANDARD**

13 To detain a defendant pending trial, the Court must find by a preponderance of the evidence that
 14 there are no conditions that will reasonably assure the defendant’s appearance as required, or find by
 15 clear and convincing evidence that there are no conditions which reasonably will assure the safety of any
 16 person or the community. 18 U.S.C. § 3142(f).

17 In cases such as this, where there is probable cause to believe that the Defendant violated the
 18 Controlled Substances Act and faces a maximum of 10 years or more in prison, there is a rebuttable
 19 presumption that no condition or combination of conditions reasonably will assure the defendant’s
 20 appearance as required and the safety of the community. *Id.* § 3142(e)(3)(A). The burden of production
 21 then shifts to the defendant. *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (citing *United*
 22 *States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986)). Although the presumption is rebuttable, it is
 23 not a “bursting bubble.” *United States v. Jessup*, 757 F.2d 378, 382-83 (1st Cir. 1985) (Breyer, J.). In
 24 other words, the presumption is not so weak that whenever the defendant introduces evidence, “the
 25 presumption ‘bursts’ and totally disappears, allowing the judge (or jury) to decide the question without
 26 reference to the presumption.” *Id.* Since a defendant can “always provide the magistrate with *some*
 27 reason ... a ‘bursting bubble’ approach might render the presumption virtually meaningless, contrary to

1 Congress's clear intent." *Id.* (emphasis added).

2 If the Court finds that the defendant has rebutted the statutory presumption of detention, the
 3 Court considers four factors in determining whether the pretrial detention standard is met: (1) the nature
 4 and circumstances of the offense charged; (2) the weight of the evidence; (3) the defendant's character,
 5 physical and mental condition, family and community ties, past conduct, history relating to drug or
 6 alcohol abuse, and criminal history, as well as whether the crime was committed while the defendant
 7 was on probation or parole; and (4) the nature and seriousness of the danger to any person or to the
 8 community that would be posed by the defendant's release. 18 U.S.C. § 3142(g).

9 Here, neither Leydis nor Carrero can overcome the presumption in favor of detention. Their
 10 failures to previously honor conditions of release and their extensive international ties establish that no
 11 conditions of release can mitigate their risk of flight. Moreover, the nature and circumstances of the
 12 current offense, specifically the volume of fentanyl involved in the crime, show that the defendants pose
 13 a considerable danger to the community.

14 **III. ARGUMENT**

15 **A. Leydis and Carrero's repeated violations of prior conditions and willingness to
 16 mislead authorities demonstrate that they cannot be trusted to appear as required.**

17 Leydis and Carrero's arrests in the current case are far from their first run-ins with law
 18 enforcement. Every time the defendants promise to appear for further hearings, they abscond and are
 19 only heard from when arrested again on other conduct. In 2005, Leydis was deported after being
 20 apprehended by U.S. Border Patrol in Texas. At some point afterwards she re-entered the country.
 21 Since then, she has served as a custodian on immigration bonds for both of her children, yet failed to
 22 appear for any hearings. For example, in August 2012, immigration officials released Emilson into
 23 Leydis's custody on the condition that he would appear for a hearing. Emilson never appeared. The
 24 same thing happened again in February 2014 following Emilson's arrest on unrelated conduct. In 2018,
 25 Leydis bailed Carrero out of immigration custody, promising to make future appearances at hearings.
 26 True to form, no future hearings were attended.

27 In addition to defying immigration officials, Carrero flouts mandates of local courts. In August
 28

1 2019, officers of the San Francisco Police Department (SFPD) arrested Carrero after seeing her conduct
2 hand-to-hand drug sales in the Tenderloin neighborhood of San Francisco. A few months later, in
3 March 2020, Carrero was arrested again, along with another individual, for narcotics sales in a different
4 part of the Tenderloin. The San Francisco District Attorney's Office filed charges following both
5 arrests, which appear to still be pending. As a condition of release, Carrero was ordered to stay away
6 from the areas of the Tenderloin where she was arrested. Carrero remained undeterred. As described in
7 the criminal Complaint, on July 2, 2020, an undercover federal agent purchased fentanyl from Carrero
8 on Hyde Street in the Tenderloin. Dkt. 1, Compl. ¶¶ 57-67. SFPD officers report seeing Carrero in the
9 area on a near daily basis. Unbeknownst to the federal government, the San Francisco City Attorney's
10 Office also noticed Carrero's repeated conduct. In September 2020, the City Attorney's Office sued
11 Carrero to enjoin her from entering the Tenderloin as prior court stay away orders went unheeded. *See*
12 *People v. Carrero*, CGC-20-586736 (Sup. Ct., S.F. County). Undersigned counsel recently reviewed the
13 docket in that case. According to court filings, Carrero was personally served with the lawsuit on
14 October 9, 2020 while standing on the sidewalk of Hyde Street between Golden Gate and Turk – in the
15 middle of the very area from which she previously was court-ordered to stay away. *See People v.*
16 *Carrero*, GCG-20-586736, Proof of Service of Summons (filed Nov. 4, 2020).

Finally, intercepted calls show that Leydis and Carrero are willing to lie for others to assist them in evading authorities. As noted in the Complaint, the Honorable Jon S. Tigar, U.S. District Judge, authorized the interception of wire communications over phones used by Leydis and Carrero. On August 24, 2020, Carrero received a call from a sheriff's office that was inquiring about an individual named Jason Mayorquin. Carrero indicated that Jason was her cousin. The representative from the sheriff's office said they needed to get in contact with Jason. Carrero stated that she did not have his new telephone number but could try to contact him on Facebook. The sheriff's office representative asked Carrero to report back if she was able to find a contact phone number. A few hours later, at approximately 5:08 p.m., Leydis called Carrero to discuss Jason. A transcript of that call follows:³

³ The original call was conducted in the Spanish language. Spanish linguists prepared the transcript referenced here, which was provided by the government to defense counsel for both Leydis and Carrero.

1 CARRERO

[Aside: Yes, I'm going to (U/I)⁴] Mommy.

2 LEYDIS

Nicole,⁵ I forgot to tell you, Jason [U/I] ankle bracelet, did he mention it to you?

4 CARRERO

Yes, he just told me.

5 LEYDIS

Oh yeah, and right now that I just got out of the bathroom, I was going to tell you. He told me if I asked you. You only know...

8 [Voices Overlap]

9 CARRERO

He told me, [Audio Glitch] [U/I] but it is a long time.

[Audio Glitches] He said. Just a long time. [Pause]

11 LEYDIS

All right, [U/I] [Audio Glitches].

12 CARRERO

Huh?

13 LEYDIS

Whenever they call you again, just tell them, you know nothing about him.

15 CARRERO

[U/I] [Audio Glitches].

16 LEYDIS

Yes, it won't benefit you for you to continue answering.

17 CARRERO

Yeah.

18 Based on the context of the call, it appears that Carrero's cousin was subject to some degree of
19 court supervision based on the reference to an ankle monitor. Agents do not have additional information
20 regarding the cousin's criminal history or status on supervision. What is clear, however, is that during
21 the conversation, Leydis coached Carrero to lie if the authorities ever called her again. Leydis
22 cautioned, "Whenever they call again, just tell them, you know nothing about him." Leydis clearly
23 knew this was a lie and that Carrero in fact was in contact with Jason as she asked whether Jason had
24 mentioned the "ankle bracelet." Carrero agreed to her mother's plan at the end of the call. In light of

25
26 ⁴ The notation U/I indicates that a certain portion of the intercepted conversation was
unintelligible to monitors.

27 ⁵ Nicole is one of Carrero's aliases. According to some criminal history records, it may be
Carrero's middle name.

1 this brazen agreement to lie and presumably assist a family member evade law enforcement, this Court
 2 has no reassurance that Leydis or Carrero will abide by any conditions imposed on them.

3 **B. Both Leydis and Carrero's international ties render them a significant flight risk.**

4 As noted in the Complaint, several of the co-defendants in the case are related. While these
 5 family members live in the Bay Area, much of Leydis and Carrero's extended family lives in Honduras
 6 as described in the Pretrial Services Reports. Intercepted communications as well as prior
 7 representations to this Court indicate that the family has every intention of going back to Honduras,
 8 presumably after making enough money locally on the drug trade. During an intercepted phone call on
 9 August 26, 2020, Leydis spoke with a family member abroad about a house that Emilson is constructing
 10 in Honduras. An excerpt of the conversation follows:⁶

11 LEYDIS

Emilson is also stressed here with work so then he gets
 stressed with...[audio glitch]... he stresses her, and they
 are just like that, just problems, so then... mainly where it
 could me more relaxed is in Honduras. Life here is a little
 stressed because... thing is that Emilson has a lot of
 customers and one calls him, another one calls him, how
 can there be no stress.

18 RELATIVE

Yes, because there are times when he's talking with...
 [Aside: wait mami, we can talk later]...Look, he's
 removing the ceramic from the house, he's going to put
 porcelain. [U/I] how can I say no to him.

22 LEYDIS

[U/I]

23 RELATIVE

Let's give him the satisfaction. That house is not going to
 look like a house, it's going to look like a mansion. With
 everything that he's asking.

27 ⁶ The original call was conducted in the Spanish language. Spanish linguists prepared the
 transcript referenced here, which was provided by the government to defense counsel for both Leydis
 28 and Carrero.

1 LEYDIS My God, thing is that Emilson doesn't stop spending, right?
2
3 [...]
4 RELATIVE I told everyone, [U/I] a garage in his house. He said, here in
5 the name of [U/I]. This guy wants to leave it like a, like
6 what can I tell you... Look, with everything that that man
7 has asked for [U/I] that house is not going to look like a
8 house.
9 LEYDIS God permit.
10 RELATIVE A mansion.
11 LEYDIS So then it's a mansion and a half, what he's making [U/I].
12 RELATIVE You could see what, how it will be, because everything
13 white. White on top and white on the bottom. He's going to
14 throw out all the wood.
15 LEYDIS Emilson [U/I]. Just anyone is going to go live there and
16 they will use it first.

17 Based on the context of the call, Leydis and the family member appear to be discussing a house
18 under construction that Emilson is funding. Leydis decried the amount of money that Emilson is
19 spending. The family members responds that with the amount of things Emilson wants to get done, the
20 final product won't be a "house," but will be a "mansion." Additionally, intercepted calls indicate that
21 members of the family wire money to Honduras. If released, Leydis and Carrero have a home abroad
22 and every incentive to return there as opposed to abiding by a bond in this case.

23 Further, Leydis's significant other, Jairo Rodriguez-Martinez, who was charged with drug
24 trafficking offenses in December 2019 informed the Court during his sentencing that his family,
25 including Leydis, and their young daughter, anticipated returning to Honduras. *See* No Cr 19-0707
26 HSG. In urging the Court to impose a time served sentence, Rodriguez-Martinez noted that the family
27 intended to leave the county. Taken together, the Cruz family appears to be planning to return to
28

1 Honduras and is already making arrangements for their lives there. No combination of conditions can
 2 mitigate the risk of flight posed by both defendants.

3 **C. The quantities of fentanyl involved in this case endangered the community at large
 4 and the defendants' immediate families.**

5 In addition to risk of flight, both Leydis and Carrero pose a significant danger to the community.
 6 As described in the Complaint, this case primarily involves the sale of fentanyl. The Cruz
 7 organization's drug dealing was all encompassing – from selling to individual drug users on the street, to
 8 selling larger resale quantities, including several ounces of fentanyl at a time, to resellers. As mentioned
 9 above, an undercover agent bought fentanyl from Carrero on the street in the Tenderloin. Intercepted
 10 calls and physical location data associated with Carrero's cell phone indicate that she is in the
 11 Tenderloin on a near daily basis selling drugs on the street. Over the course of several months, the
 12 undercover agent purchased larger quantities of fentanyl from Carrero and Leydis. On one occasion, the
 13 undercover bought four ounces of fentanyl (over 100 grams) from the defendants. (*See* Dkt. 1, Compl.
 14 ¶¶ 69-76.) Leydis and Carrero also sold counterfeit pharmaceutical pills, commonly referred to as "M-
 15 30"s. Typically, M-30 references the markings on tablets of oxycodone. Over the past year, law
 16 enforcement has seen an increase in the circulation of counterfeit M-30 pills that contain fentanyl. In
 17 this case, Leydis and Carrero sold thousands of pills to the undercover agent. Laboratory testing
 18 confirmed the presence of fentanyl and acetaminophen (the generic ingredient in the drug known by the
 19 brand name Tylenol). *See* Dkt. 1, Compl. ¶¶ 77-81, 91-107. This is no mere small-time drug operation.
 20 This quantity of fentanyl is considerable. As noted in the Complaint, according to the DEA, two
 21 milligrams of fentanyl can be fatal. Dkt. 1, Compl. ¶ 17.

22 One of the most concerning aspects of this case is that fentanyl was seized from Leydis and
 23 Carrero's apartment where Leydis's five year old daughter and Carrero's two year old son both live.
 24 Agents seized approximately 1.4 gross kilograms of suspected fentanyl, 153 gross kilograms of
 25 suspected cocaine, and 276.5 grams of suspected methamphetamine from the residence.⁷ The majority
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28 ⁷ All of these measurements reflect gross weights that are inclusive of packaging. The drugs
 have been sent to the DEA Western Laboratory for further chemical analysis.

1 of these drugs were stored in the broiler below the oven, within easy reach of either of the children. The
 2 rest of the drugs were located in an under sink drawer in a bathroom. Those, too, were within reach of
 3 the kids. Undersigned counsel understands that because of the volume of drugs and the age of the
 4 children, agents were required to call local child protective services. The children currently remain in
 5 the custody of Alameda County Child Protective Services pending an investigation and custody hearing.

6 The dangers of fentanyl cannot be stressed enough. If released, Leydis and Carrero would have
 7 access to their drug sources to acquire more drugs for sale. Selling more drugs would mean the
 8 defendants could easily and quickly acquire cash to flee the country. The Complaint quotes calls during
 9 which Leydis and her brother, co-defendant Ivan Mauro Cruz Mayorquin, discuss the high demand for
 10 fentanyl and how quickly they can sell it. *See* Dkt. 1, Compl. ¶¶ 24-25. No combination of conditions
 11 of release can mitigate this ongoing danger.

12 **IV. CONCLUSION**

13 Leydis and Carrero cannot rebut the presumption of risk of flight and danger to the community.
 14 Even if the Court finds that they have successfully rebutted that presumption, the government has shown
 15 by a preponderance of the evidence that no condition or combination of conditions would reasonably
 16 assure their appearance for future court proceedings. Both have failed to respect prior court directives
 17 and have no apprehension about lying to law enforcement. Much of their family remains in Honduras
 18 where their co-defendant, Emilson, appears to be building a home. And finally, prior deportations,
 19 arrests, and the simply knowledge of the danger of fentanyl, have not dissuaded Leydis and Carrero
 20 from selling the drug or storing it in their home. The danger to the community cannot be mitigated.

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1 Accordingly, the government joins Pretrial Services in requesting that the Court detain Leydis and
2 Carrero pending trial.

3 DATED: December 17, 2020

Respectfully submitted,

4 DAVID L. ANDERSON
5 United States Attorney

6 _____/s_____
7 SAILAJA M. PAIDIPATY
Assistant United States Attorney

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